IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 667 (M/S) OF 2002

State of Uttaranchal and another. …… Petitioners.

Vs.

K.M. Agarwal and others. ……. Respondents.

With

WRIT PETITION NO. 668 (M/S) OF 2002

State of Uttaranchal and another. …….. Petitioner.

Vs.

K.M.Agarwal and others. …….. Respondents.

Learned S.C. for the petitioner.
Sh.Ramji Srivastava, Adv. For the respondent no.1 and learned CSC.

Hon'ble Rajesh Tandon, J.

Heard the State counsel for the petitioners and Sri Ramji Srivastava counsel for the respondent no.1.

By the present writ petitions the petitioners have prayed for a writ of certiorari quashing the orders dated 26.2.2002 and 5.6.2002 passed by the respondent no.3 and 2 respectively.

Briefly stated Sri K.M. Agarwal has preferred an application u/s 21 (8) of U.P. Act No. 13 of 1972 with regard to the property Manmohan consisting of two rooms, joint toilet, Kitchen situated at Mall Road, Mussoorie on the ground that he is the landlord of the property and the Government Food Preservation Centre is the tenant of the accommodation in question at the rate of Rs. 500/- per month. It was stated tat the entire

amount covered by the disputed property in question is 730 sq. feet and the property is being used for commercial purposes. The government Circle rate is Rs. 4/- per sq. feet as covered area. The valuation of the land comes to Rs. 2,04,000/- and the cost of the construction has been valued to Rs. 8,70,000/-. The total value of the property in question comes to Rs. 10,80,000/-.

Counsel for the landlord has stated that in accordance with the provisions of Sec. 21 (8) of U.P. Act no. 13 of 1972, he is entitled for enhancement to a sum equivalent to one twelfth of ten percent of the total value i.e. Rs. 1,08,000/-. The monthly rent of the property, therefore, comes to Rs. 9000/- per month.

A written statement was filed stating that the property is for the commercial purposes. On behalf of the landlord the affidavit of Sri Ashwani Kumar Kalra and Sri I.D. Minocha as well as the valuation report dated 8.3.1999 was filed. The affidavit of Sri Suraj Prakash and the valuation report dated 1.3.1999 is on record.

Against the aforesaid report no report has been produced on behalf of the defendant showing the valuation or any affidavit of the engineer in support of the valuation.

The prescribed authority has allowed the application and fixed the rent to the extent of Rs. 5000/- per month payable w.e.f. 1.4.1998.

The Prescribed Authority while recording the finding has taken into consideration the report of the valuer to the extent of Rs. 10,80,000/-. Taking into consideration one twelfth of ten percent of Rs. 10,80,000/- i.e. 1,80,000/- the rent comes to Rs. 9000/-, but the Prescribed Authority has fixed the same to the extent of Rs. 5000/- alone. The finding of the Prescribed Authority was challenged by the landlord as well as by the State of Uttaranchal, both by filing the appeal.

The Appellate Court has taken into consideration that entire covered area is 1730 sq. fit. The value of the building is likely to increase with the passage of time and further in absence of any provision for eviction, the interest of the landlord is fully safe-guarded if the rent is enhanced to a some equivalent to one twelfth of ten per cent of the market value of the building under tenancy from the date of application. The Appellate Authority, therefore, has come to the conclusion that the evidence on the record fully establishes the rent to the extent of Rs. 9000/- after taking into consideration the report of the Valuer to the extent of Rs. 10,80,000/-. The aforesaid report of the valuer remained un-controverted

Section 21 (8) of U.P. Act No. 13 of 1972 reads as under:-

> *"Nothing in Clauses (a) of Sub-Section (1) shall apply to a building let-out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution unless the Prescribed Authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-Section (1) is applicable;*
>
> *Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelth of ten percent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application.*
>
> *Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement."*

Both the courts below have taken into consideration one twelfth of ten percent of the market value of the building under tenancy in accordance with the provision to Section 21 (8) of the Act.

In State of U.P. and other Vs. XII Additional District Judge, Saharanpur and others – 1992 (2) ARC 271, the Apex Court has observed that while taking into consideration the market value of the building, the valuation of the land as well as the constructed portion both have to be taken into consideration. It has been held by the Apex Court as under:

> *"After giving our anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building under section 3 (i) of the Act, there is no express exclusion of the values land on which the building stands. In the absence of such express exclusion, the land being intrinsically separable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may similar parcel of land may differ substantially on account of location advantage of the site it question. The difference of valuation of land because of such location advantage creeps into the valuable than the other although from the structural point of view, both the buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of illegal and improper. In any case, case, the definition of "building" under the Act clearly shows that the building thereunder means roof structure including the land underneath the said structure. Inclusive part of the definition only relate to the land appurtenant to such building and not to the land underneath the roof structure."*

As will appear, that the value of the land as well as the building both have been taken into consideration while calculating the cost of the building. There is report of the valuer of the landlord fixing the value to the extent of Rs. 10,80,000 and taking into consideration one-twelfth of ten percent of the market value of the building under tenancy, rent comes to Rs. 9,000/-. No other report has been submitted by the petitioners so as to controvert the report of the valuer of the landlord.

Both the courts below have rightly come to the conclusion that the rate of rent should be Rs. 9,000/- per month. I find no infirmity in the orders passed by the courts below so as to interfere under Article 226/227 of the Constitution of India.

In Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 scope of Article 226 of the Constitution of India has been considered. In view of this decision, jurisdiction under article 226/227 of the

Constitution of India is limited and High Court cannot act like a Court of appeal.

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> "In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- " considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

This time is granted to the petitioner to pay the amount by 31st of October 2004. Both the writ petitions are dismissed.

Dt. 27.8.2004

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(Rajesh Tandon, J.)